

### III. Issues for Comment

The Commission requests written comment on any or all of the following questions. The Commission requests that responses to its questions be as specific as possible, including a reference to the question being answered, and reference to empirical data or other evidence wherever available and appropriate.

#### A. General Issues

- (1) Is there a continuing need for the Guides? Why or why not?
- (2) What benefits have the Guides provided to consumers? What evidence supports the asserted benefits?
- (3) What modifications, if any, should be made to the Guides to increase their benefits to consumers? **The definition** of consumer should be broadened to more than individual consumers. Businesses are consumers and purchase in volume influencing the marketplace as a whole.
  - (a) What evidence supports your proposed modifications? **In the past**, evidence of green washing with institutional products has been brought to the FTC's attention and dismissed because the transgressions did not affect individual consumers.
  - (b) How would these modifications affect the costs the guides impose on businesses, and in particular on small businesses? **The entire premise** of this question should be called into question. If businesses are advertising environmental products they must be able to back those claims up with definitive information and not glossy words. If that imposes any costs on them, it's their fault for using false or mis-leading advertising.
  - (c) How would these modifications affect the benefits to consumers: **Consumers** are not just individual consumers. Consumers are government agencies, institutions, academia and more. Individuals use public buildings, schools, etc and all consumers should receive protection from the Guides.
- (4) What impact have the Guides had on the flow of truthful information to consumers and on the flow of deceptive information to consumers? **Not much**. There was some enforcement a

number of years ago but I am unaware of recent, effective enforcement actions.

- (5) What significant costs have the Guides imposed on consumers? What evidence supports the asserted costs?
- (6) What modifications, if any, should be made to the Guides to reduce the costs imposed on consumers? [Again](#), I fail to see how the enforcement of what is essentially 'truth in advertising' imposes additional costs to the consumer. If a company has engaged in false or misleading marketing practices there should be penalties of some kind. They bring it on themselves. The presumption there is a cost to consumers is specious.
  - (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the benefits provided by the Guides?
- (7) Please provide any evidence that has become available since 1998 concerning consumer perception of environmental claims, including claims not currently covered by the Guides. Does this new information indicate that the Guides should be modified? If so, why, and how?
- (8) Please provide any evidence that has become available since 1998 concerning consumer interest in particular environmental issues. Does this new information indicate that the Guides should be modified? If so, why, and how? If not, why not?
- (9) What benefits, if any, have the Guides provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?
- (10) What modifications, if any, should be made to the Guides to increase their benefits to businesses, and in particular to small businesses? [The definition](#) of consumer should be broadened to include volume purchasers such as businesses, institutions, government agencies, etc.
  - (a) What evidence supports your proposed modifications? [Volume](#) purchasers represent a large part of the overall marketplace. Shouldn't the government enforce claims in all markets?

- (b) How would these modifications affect the costs the Guides impose on businesses, and in particular on small businesses?
  - (c) How would these modifications affect the benefits to consumers?
- (11) What significant costs, including costs of compliance, have the guides imposed on businesses, and in particular on small businesses? What evidence supports the asserted costs? Again, the premise of these questions are frankly inappropriate. If a company markets a product as being better than other products, especially with vague environmental claims they should be able to substantiate the claims. If there are any costs associated, so be it. Government has a duty to be the impartial arbiter and have a scientific basis for its standards.
- (12) What modifications, if any, should be made to the Guides to reduce the costs imposed on businesses, and in particular on small businesses?
  - (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the benefits provided by the Guides?
- (13) What evidence is available concerning the degree of industry compliance with the Guides? To the best of my experience, there has been an increase rather than a decrease in false marketing claims. Greenwashing has taken on more subtle tones with a plethora of buzzwords like sustainable, environmentally friendly, carbon offsets, green, and so forth. Even when standards are used there is often less than full disclosure. There are several tiered standards with perhaps a Silver, Gold and Platinum as the levels. However, very often a product is marketed as meeting The Standard without reference to the levels of achievement.
  - (a) To what extent has there been a reduction in deceptive environmental claims since the Guides were issued? Please provide any supporting evidence. Does this evidence indicate that the Guides should be modified? If so, why, and how? If not, why not?
  - (b) To what extent have the Guides reduced marketers'

uncertainty about which claims might lead to FTC law enforcement actions? Please provide any supporting evidence. Does this evidence indicate that the Guides should be modified? If so, why, and how? If not, why not?

- (14) Are there claims addressed in the Guides on which guidance is no longer needed? If so, explain. Please provide supporting evidence.
- (15) What potentially unfair or deceptive environmental marketing claims, if any, are not covered by the Guides?
  - (a) What evidence demonstrates the existence of such claims?
  - (b) With reference to such claims, should the Guides be modified? If so, why, and how? If not, why not?
- (16) What modifications, if any, should be made to the Guides to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?
- (17) Do the Guides overlap or conflict with other federal, state, or local laws or regulations? If so, how?
  - (a) What evidence supports the asserted conflicts?
  - (b) With reference to the asserted conflicts, should the Guides be modified? If so, why, and how? If not, why not?
  - (c) Is there evidence concerning whether the Guides have assisted in promoting national consistency with respect to the regulation of environmental claims? If so, please provide the evidence.
- (18) Are there international laws, regulations, or standards with respect to environmental marketing claims that the Commission should consider as it reviews the Guides, such as the International Organization for Standardization ("ISO") 14021, Environmental Labels and Declarations – Self-Declared Environmental Claims? If so, what are they? Should the Guides be modified in order to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?

B. Specific Issues

- (1) Should the Guides be revised to include guidance regarding renewable energy or carbon offset claims? If so, why, and what guidance should be provided? If not, why not?
  - (a) What evidence supports making your proposed revisions(s)?
  - (b) What evidence is available concerning consumer understanding of the terms “renewable energy” and “carbon offset?”
  - (c) What evidence constitutes as reasonable basis to support each such claim?
- (2) Should the Guides be revised to include guidance regarding “sustainable” claims? If so, why, and what guidance should be provided? If not, why not?
  - (a) What evidence supports making your proposed revision(s)?
  - (b) What evidence is available concerning consumer understanding of the term “sustainable?”
  - (c) What evidence constitutes a reasonable basis to support a “sustainable” claim?
- (3) Should the Guides be revised to include guidance regarding “renewable” claims? If so, why, and what guidance should be provided? If not, why not?
  - (a) What evidence supports making your proposed revision(s)?
  - (b) What evidence is available concerning consumer understanding of the term “renewable?”
  - (c) What evidence constitutes a reasonable basis to support a “renewable” claim?
- (4) The Guides provide that a recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process or after consumer use. Do the current Guides provide

sufficient guidance for recycled content claims for textile products? If so, why? If not, why not, and what guidance should be provided? What evidence supports making your proposed revision(s)?

I believe the FTC guides refer to and use the accepted terminology. I believe it has stood the test of time and practice and should be used. If diversion from the solid waste stream is allowed during manufacturing, it should be clear that this is a new practice and not one that has been done all along.

- (5) The Guides suggest that recycled content be calculated on the annual weighted average of a product. Should the Guides be revised to include alternative method(s) of calculating recycled content, e.g., based on the average recycled content within a product line, or an average amount of the recycled content used by a manufacturer across many or all of its product lines? If so, why, and what is the appropriate method(s) of calculation? If not, why not? What evidence supports making your proposed revision(s)?

If recycled content can be averaged within a certain product line it will allow the manufacturer to aggregate collected materials, utilize it within one product line, and yet market the information without necessarily making a distinction. If a manufacturer has 10 product lines but only has recycled content and yet markets by saying ABC manufacturer, manufacturer of award winning 50% recycled content XYZ, will consumers be able to differentiate easily between product lines? Highly unlikely. Suggest current calculation be retained with the further requirement that product lines remaining relatively unchanged be identified as such. For instance, recently a supermarket chain starting using a star system to identify the relative healthy aspects of a number of its food. The highest rating is four stars and most fresh fruits and vegetables received at least four stars. However, even some highly processed foods (like cookies and chips) that received a star even though there are relatively few consumers who believe cookies and chips are healthy foods.

Therefore, when there are available environmental product standards it would be helpful if they were communicated to consumers on a star like system but if a product has very little, if any, environmental attributes it should be reflected as such (like receiving no stars)

- (6) The Guides provide that a unqualified claim that a product or package is degradable, biodegradable or photodegradable should be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature within a “reasonably short period of time after customary disposal.” Should the Guides be revised to provide

more specificity with respect to the time frame for product decomposition? If so, why, and what should the time frame be? If not, why not? What evidence supports making your proposed revision(s)?

#### **IV. Public Meeting**

Because of the wide-reaching issues involved in environmental marketing, the Commission also believes it would be beneficial to facilitate public dialogue on select issues by hosting public meetings. Commission staff will review and consider information gathered at these meeting in addition to the public comments in formulating its final recommendation tot eh Commission concerning the Green Guides review. As noted above, the first public meeting, to be held on January 8, 2008, will address carbon offsets and renewable energy certificates. The Commission plans to announce additional public meetings addressing other green topics, such as green labeling and advertising developments and consumer perception of green marketing claims.

#### **List of Subjects in 16 CFR Part 260**

Advertising, Environmental claims, Labeling, Trade practices.

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By direction of the Commission

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Secretary